UNITED STATES GOVERNMENT
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 29

ANTONS AIRFOOD
Employer[1]

and Case No. 29-RC-9428

HOTEL EMPLOYEES AND RESTAURANT
EMPLOYEES UNION, LOCAL 37, AFL-CIO
Petitioner[2]

DECISION AND DIRECTION OF ELECTION

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, herein called the Act, as amended, a hearing was held before Peter Pepper, a Hearing Officer of the National Labor Relations Board, herein called the Board.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned.

Upon the entire record[3] in this proceeding, the undersigned finds:

1. The Hearing Officer's rulings made at the hearing are free from prejudicial

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1 The Employer's name appears as amended. The parties entered into a written stipulation (Board Exhibit 2) which purported to include the Employer's correct name as "Antons Airfood" with the letter **s** after "Anton," but without an apostrophe and without any indication of its corporate status. However, it should be noted that in various other documents introduced into evidence, the Employer's name appears alternatively as "Anton Airfood," "Anton Airfood, Inc.," "Anton's Airfoods, Inc.," "Anton Airfood of Virginia, Inc." and "Anton Airfood of Cinci, Inc." Thus, the record as a whole leaves some doubt as to the Employer's exact name.

2 The Petitioner's name appears as corrected by Board Exhibit 2.

3 The undersigned hereby amends the transcript sua sponte as indicated in the Appendix attached hereto. References to transcript page numbers will hereinafter be abbreviated as "Tr. #" References to the Employer's exhibits will be abbreviated as "Er. Ex. #."

error and hereby are affirmed.

2. The parties stipulated that Antons Airfood, herein called the Employer, is a New York corporation with facilities located at John F. Kennedy International Airport in Jamaica, New York, herein called JFK, and at La Guardia Airport in Flushing, New York, and is engaged in operating restaurants there. During the past year, which period represents its annual operations generally, the Employer derived gross revenues in excess of $500,000, and purchased and received, at its JFK facilities, goods and products valued in excess of $5,000 directly from suppliers located outside the State of New York.

Based on the foregoing and on the stipulation of the parties, I find that the Employer is engaged in commerce within the meaning of the Act, and that it will effectuate the purposes of the Act to assert jurisdiction herein.

3. The labor organization involved herein claims to represent certain employees of the Employer.

4. The Petitioner herein, Hotel Employees and Restaurant Employees Union, Local 37, AFL-CIO, seeks to represent a unit of food service employees at the Employer's restaurants at JFK Airport. The Employer currently employs a total of 64 to 66 employees at four restaurants in JFK's Terminal 1.

The Employer contends that an election would be premature at this time because the Employer's operations at JFK are expected to expand later this year.[4] Specifically, the Employer contends (1) that the busy summer season usually requires hiring an additional six employees at JFK Terminal 1; (2) that two additional airlines coming to

[4] Another issue, regarding the Employer's operation at LaGuardia Airport, is discussed separately below.

Terminal 1 in the spring of 2000[5] will necessitate hiring 25 to 30 additional food service employees there; and (3) that the Employer's opening of four additional restaurants in JFK's Terminal 7 in June will require hiring almost 100 additional employees. Thus, the Employer contends that the current group of approximately 65 employees is not a "substantial and representative complement" of the approximately 200 employees expected to work at JFK by the summer. (As addressed in more detail below, the Employer assumes that the employees at Terminal 7 would necessarily be part of the same bargaining unit as employees at Terminal 1.)

In support of its contentions, the Employer called two witnesses to testify: regional manager Ashfaque Khan, and vice president of human resources Sandra Boyer.

Khan has worked as the Employer's regional manager for almost a year. He oversees the Employer's operations in the New York City area, including both JFK and LaGuardia Airports. Khan testified that the Employer's current operations at JFK include four restaurants: Greenwich Village Bistro, Eurasia and Espresso Bar, Brooklyn Beer Garden, and Napa Wine Bar. They are all located within the Terminal 1 building: two on the ground floor, and two upstairs. As of the time of the hearing in February, the Employer employed approximately 65 employees in the job classifications of servers, cashiers, bartenders, cooks and utility employees (dishwashing/janitorial).

Seasonal employees

During the busy season when more international travelers fly to and from the United States, the Employer generally needs more employees. Although the duration of

5 All dates hereinafter are in 2000, unless otherwise indicated.

this busy season is unclear from Khan's testimony,[6] it appears that the Employer employs approximately 6 additional employees during the busy season. Specifically, Khan recalled employing 70 to 72 employees at Terminal 1 last summer (between June and August, 1999). The so-called seasonal employees work in the same job classifications as year-round employees, performing the same functions, in the same locations, and wearing the same uniforms. Some "seasonal" employees are rehired year after year, and some become permanent, year-round employees, although Khan did not know how many. Vice president of human resources, Sandra Boyer, testified that "seasonal" employees work under the same wage scale as permanent employees, and are eligible for benefits on the same basis as permanent employees (e.g., eligible for life insurance if they work at least 90 days).

In deciding when to hold an election involving a fluctuating workforce, the Board distinguishes between truly "seasonal" operations, where there is a dramatic difference in the number of employees on and off season, and merely "cyclical" operations, where a substantial, year-round complement of employees is only somewhat augmented during a busy peak. Mark Farmer Co., Inc., 184 NLRB 785 (1970); NLRB v. Broyhill Co., 528 F.2d 719, 91 LRRM 2109 (8th Cir. 1976). In truly seasonal industries, the Board's policy is to hold elections as close to the peak season as possible. *See, e.g.,* Bogus Basin Recreation Assn., 212 NLRB 833 (1974)(ski-industry election postponed until near peak of winter season). However, the Board does not generally postpone elections where a substantial, year-round employee complement exists, merely

6 At various points, Khan referred to the busy season as the "summer" or June through August (e.g., Tr. 61), June through October (Tr. 33), and May through the holidays in December (Tr. 74-5).

because the complement may be slightly higher at other times of the year. Baugh Chemical Co., 150 NLRB 1034 (1965); Elsa Canning Co., 154 NLRB 1810 (1965); Mark Farmer, supra; Bituma Corp. v. NLRB, 23 F.3d 1432, 146 LRRM 2281 (8th Cir. 1994). In those circumstances, the current employees' right to vote in an early election is paramount; this important right is not outweighed by the relatively small group's potential to vote in a later election. In the instant case, the Employer employs a substantial, year-round complement of about 65 employees at JFK's Terminal 1, and adds only 6 "seasonal" employees (an increase of less than 10 percent) during the busier months. Under these circumstances, I conclude that postponing the election until the summer, when this additional 10 percent could vote, would unduly interfere with the right of the current employee complement, which consists of 90 percent of the unit, to vote in a prompt election. Baugh Chemical, supra, 150 NLRB at 1035-6. I therefore reject the Employer's contention as to the seasonal employees.

Future expansion at JFK's Terminal 1 and Terminal 7

Khan also testified regarding the Employer's plans to expand its operations at JFK Airport, at both Terminal 1 and Terminal 7. As for Terminal 1, Khan stated that two additional airlines, Alitalia and Austrian Air, are expected to begin operating there in April, and that an existing airline, Lufthansa, would add one flight per day there. Khan stated that these additional flights at Terminal 1 will mean the restaurants will be busier, and that he "would have to hire more employees" (Tr. 34). On direct examination, Khan did not indicate the basis of his assertions regarding the additional airlines and flights. No documentary evidence was introduced -- from Port Authority, from the airlines, or from the Employer's own records -- to show whether the airlines'

plans are definite, tentative, or mere rumors at this point. On cross examination, Khan mentioned that Terminal 1 usually provides written projections of how many passengers are expected each month, but no such projections were introduced into evidence. Nevertheless, based on those alleged projections, Khan estimated that the Employer would need to hire 25 to 30 more employees at the Terminal 1 restaurants.[7]

Terminal 7 is a separate building at JFK, which Khan estimated to be a five-minute drive from Terminal 1. According to Khan's testimony, the Employer has won an unspecified contract to provide food and beverage service at Terminal 7. Khan claimed that the Employer intends to operate four establishments there (Altitudes Bistro, Seattle's Best Coffee, Seventh Avenue Deli and Little Italy). Khan testified that the restaurants at Terminal 7 were currently under construction, and would be operating by June. Khan further stated that the Employer planned to start hiring employees in April, in order to be fully staffed by June.[8] He hopes to transfer as many employees as possible from the Employer's existing New York facilities (both JFK Terminal 1 and LaGuardia) to Terminal 7, since they are already trained and experienced, but he also plans to hire some new employees. Khan testified that the Employer will need almost 100 employees at the Terminal 7 restaurants, in the same job classifications as elsewhere. Vice president Boyer testified that the Employer expects to apply the same terms and conditions of employment (including wages, benefits and personnel policies) to employees at Terminal 7 as the Employer applies to the other New York employees.

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7 Specifically, under questioning by the Petitioner and the Hearing Officer, Khan counted three flights per day by Alitalia, plus at least one flight per day by Austrian Airlines, for a total of 28 flights per week being added to Terminal 1's current number of 83 to 85 flights per week.

8 See Tr. 12. Contrary to assertions in the Employer's post-hearing brief, Khan did *not* claim to be already "in the process" of hiring for Terminal 7.

The Employer did not introduce any probative documentary evidence to corroborate the existence of the plans to operate the Terminal 7 restaurants, nor to demonstrate whether or when the plans might actually happen. The Employer introduced neither a contract with Port Authority, nor a lease, nor a construction contract, nor architectural drawings, nor any business records to confirm the Employer's constructions plans and schedule and hiring projections. In fact, Khan conceded that he has never seen a copy of the Employer's food and beverage contract with the airport. The only document in evidence which related to the Terminal 7 operations was a trade magazine article in which the Employer announced winning the contract and which quoted the Employer's chairman, William Anton, to that effect (Er. Ex. 1). Khan said he thought the article came from "Food and Beverage Media" or "Airport Retail News" (Tr. 42), although the document itself appears to have a "Total Food Service" logo. In any event, when the Petitioner objected that this document contained inadmissible hearsay evidence, the Employer denied offering the document as "proof of the matter asserted" but offered it merely as "background" (Tr. 11). I find that this document has virtually no probative value regarding the Employer's plans to expand at Terminal 7.[9] The only evidence of the Employer's plans regarding Terminal 7 is therefore Khan's testimonial evidence. In that regard, it should be noted that the basis of Khan's direct-exam testimony became somewhat murkier under questioning by the Petitioner and Hearing Officer. Khan later testified that he "thinks" that "they" (unspecified) are adding a new space to the existing Terminal 7 building, and that he was "told" that "they" started

[9] The document is actually "double hearsay," inasmuch as it purports to show what an unidentified trade magazine writer said about what William Anton said. Neither the writer nor Anton were present at the hearing to testify, and the basis of their assertions could not be explored through cross examination.

construction the week before the hearing. It is not clear from Khan's testimony that he actually had any first-hand knowledge of the operations at Terminal 7. Finally, although Khan conceded that an original projection date for completion in April or May was postponed to June, the basis for his knowledge regarding any projection date is not clear from the record.

As noted above, the Employer assumes that the employees at Terminal would necessarily be part of the same bargaining unit as employees at Terminal 1. It should be noted that *if* the Petitioner won an immediate election among the existing employees, and *if* the Employer later began to operate restaurants at Terminal 7, those employees may or may not constitute an accretion to the existing unit. That would depend on many factors that cannot be known with certainty at this point in time. Thus, this Decision makes no finding as to whether the Terminal 7 employees would necessarily accrete to an existing unit at Terminal 1, or whether they could constitute a separate appropriate unit. Nevertheless, for purposes of discussion, the following analysis assumes that any future Terminal 7 employees could possibly be part of the same unit. I re-emphasize, however, that there is no evidence in this record to establish, even assuming the expansion of the Employer's facilities to Terminal 7, that the Terminal 1 unit does not and cannot exist as a stand-alone appropriate unit.

In considering whether a representation petition is premature due to an employer's anticipated expansion, the Board attempts to balance competing interests between current employees and future employees. As the Board stated in Toto Industries (Atlanta), Inc., 323 NLRB 645 (1997):

> [C]urrent employees should not be deprived of the right to select or reject a bargaining representative simply because the Employer plans an expansion in

> the near future. The Board, however, does not desire to impose a bargaining representative on a number of employees hired in the immediate future, based upon the vote of a few currently employed individuals.

Id. at 645. The Board therefore attempts to determine whether an employee complement is sufficiently "substantial and representative" to warrant an immediate election, considering such factors as the size of the current workforce compared to the size of the ultimate expected workforce; the expected time lapse and rate of expansion until the full complement is reached; the certainty of the expansion;[10] and the number of job classifications requiring different skills which are expected to be filled. Id.

In the instant case, there is no dispute that any additional employees hired by the Employer at JFK airport would work in the same job classifications as the current employees, including servers, bartenders, cooks, cashiers and utility employees. There is no contention that the *nature* of the Employer's operations will change so as to require different skills or classifications. Rather, the issue is whether the current workforce's *size* is a substantial representation of the proposed expansion (assuming arguendo that all employees would be in the same unit).

Khan's testimony indicates that the current complement of 65 employees at JFK's Terminal 1 restaurants may expand to about 200 (including 6 seasonal employees, 25 to 30 additional employees at Terminal 1, and almost 100 additional employees at Terminal 7). Thus, based on the Employer's projections, the current complement constitutes approximately 32% to 33% of the proposed, expanded complement at JFK. I find this to be a substantial and representative complement. Although the Board does

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10 The Board's consideration of the "certainty" of expansion in these cases is analogous to its requirement of a "definite and imminent" closing in contracting-unit cases. Martin Marietta Aluminum, Inc., 214 NLRB 646 (1974).

not use a specific minimum percentage in these cases,[11] I note that a percentage of 32-33% falls within the range of the Board has found to be "substantial and representative" in past cases. For example, in Endicott Johnson of Puerto Rico, Inc., 172 NLRB 1676 (1968), the Board approved an immediate election where the existing complement of 200 employees was only 18% of the expected 1,100 employees. In General Cable Corp., 173 NLRB 251 (1968), the Board approved an immediate election where the existing complement of 69 employees was 31% of the expected 220 employees. *See also* Gerlach Meat Co., Inc., 192 NLRB 559 (1971)(35% complement is substantial and representative).

Furthermore, I find the record evidence insufficient to establish the certainty of the Employer's plans. As described in more detail above, the Employer did not introduce any documentary evidence on which the projections were supposedly based (e.g., flight projections at Terminal 1) or to corroborate its assertions regarding the contract and construction at Terminal 7. Rather, the Employer presented only the testimony of a witness who has never seen a copy of the Employer's alleged contract for Terminal 7, who was only "told" that "they" had started construction, and who seemed to have no first-hand knowledge himself. The Board does not deprive employees of their right to an immediate election when an employer's plans to expand are indefinite or speculative. Meramec Mining Co., 134 NLRB 1675 (1961); Witteman Steel Mills, Inc., 253 NLRB 320 (1980); Laurel Associates, Inc., d/b/a Jersey Shore Nursing and Rehabilitation Center, 325 NLRB 603 (1998). In the instant case, the Employer has

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11 The expanding-unit cases involving unrepresented employees should not be confused with contract bar cases, where at least 30% of employees must have been employed at the time the contract was executed with the incumbent union in order to bar a rival union's petition. *Compare* General Extrusion Co., 121 NLRB 1165 (1958) with Endicott Johnson de Puerto Rico, Inc., 172 NLRB 1676 (1968).

provided insufficient evidence to prove that its plan to employ 200 employees at JFK airport is a definite plan based on actual commitments, as opposed to a tentative plan, a rumor or even wishful thinking. Khan's testimony, apparently based on other evidence not introduced on the record, is simply not competent to prove the matter asserted.

In sum, based on the foregoing, I find that the present complement achieves the desired balance between insuring maximum employee participation in the selection of a bargaining agent, while not depriving current employees of immediate representation, if they so choose. I specifically find that the Employer's present complement of approximately 65 food-service employees at JFK airport is sufficiently substantial and representative of a potential 200-employee unit in the same classifications to warrant an immediate election (assuming that they would be part of the same bargaining unit). Furthermore, I find the evidence regarding the "certainty" of the Employer's expansion at JFK insufficient to justify delaying the election on those grounds. Accordingly, I deny the Employer's motion to dismiss the petition, and find that a question affecting commerce exists concerning the representation of certain employees of the Employer. The uncertainty of the size of the anticipated unit is heightened by the issue, noted above, regarding the inclusion of the Terminal 7 employees. I find there is no record evidence that would compel the conclusion that the Terminal One employees could not constitute an appropriate unit, separate and apart from the Terminal 7 workers.

5. As noted above, the Petitioner seeks to represent the Employer's food service employees at JFK airport, who are currently employed at four restaurants in Terminal 1. However, the Employer contends that the only appropriate unit must include employees in all of its New York City operations, which includes both LaGuardia Airport

in Flushing, New York ("LaGuardia") and JFK Airport in Jamaica, New York.[12] The Petitioner stated that it is not willing to proceed to an election in the broader unit.

Khan testified that Antons Airfood operates four establishments at LaGuardia, including the Main Bar, New York Deli, Satellite Bar and Big Apple Bar. A total of 46 food-service employees are employed at those establishments, in the same classifications as employees at JFK. It appears that each establishment also has an on-site supervisor. Khan estimated that LaGuardia is a 12 to 15 minute drive from JFK, and also that the distance between the two is 12 to 15 miles. Administrative notice is hereby taken that the distance between the two airports is approximately 10 miles, with travel time obviously dependent on traffic conditions.

As regional manager, Khan spends four days per week at the JFK restaurants, and two days per week at the LaGuardia restaurants. Khan initially testified -- in a somewhat conclusory manner -- that he manages all eight restaurants, including hiring and scheduling employees, disciplining them, promoting them, evaluating them and deciding their wage increases. No specific examples were provided to demonstrate Khan's authority to act on a regional basis, as opposed to the supervisors' authority to act on a local basis. In this regard, although Khan claimed to hire all employees, Boyer later testified that the on-site supervisors conduct a first job interview and make a recommendation, before the candidate goes for a final interview. No specific examples were given to show how the process works, such as whether upper management usually follows the supervisors' recommendations. Second, although Khan stated that he

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12 The Employer also operates restaurants and bars at airports in five other states, but those locations are not relevant to the instant proceeding. There is no history of collective bargaining at any of the Employer's locations.

disciplines all employees, he also stated that he discusses disciplinary decisions with on-site supervisors, and that the supervisors make recommendations. It should be noted that, according to the personnel handbook (Er. Ex. 2, which is distributed to all employees), supervisors review the facts leading to a verbal warning. (The handbook also states that violations "will be addressed immediately by the Manager-on-Duty," although it is not clear who the "Manager on Duty" is.) Vice president Boyer testified that on-site supervisors have input into disciplinary decisions, explaining that a "supervisor needs to convey to him [Khan] when they're going to take disciplinary action, what the specifics were." No examples were given to demonstrate whether Khan conducts an independent review of the facts, or whether he usually follows the on-site supervisors' recommendations without further investigation. Decisions to terminate employees are made by Khan and Boyer. Third, although Khan claimed to evaluate all employees and determine their wage increases, the handbook contains the following language: "In your evaluation, your supervisor makes a written report of your performance.... Your supervisor and you will discuss your achievements and growth .... A good review may result in a wage increase" (Er. Ex. 2, p. 29, emphasis added). Wage increases are based on a formula which converts the employee's numerical ratings into an increase between 0 and 6%. As for promotions, Khan stated that he based his decision on input from the supervisors, as well as his own observations of employees and other factors. Finally, although Khan claimed to schedule employees at all eight restaurants, the personnel handbook states: "Your supervisor writes your schedule" and "Your supervisor is the person to discuss your schedule with" (p. 6, emphasis added). The handbook also says that written requests for vacation time must be submitted to the "General

Manager/supervisor" (p. 25).[13] Khan explained that if employees need to change their schedule or to request time off, they may either ask him directly when they see him, or ask via their immediate supervisor. In short, the record as a whole indicates at least some input by the on-site supervisors. Without specific examples, it is difficult to assess the extent to which labor-relations decisions are centralized.

Khan also testified regarding employee transfers and other interchange between JFK and LaGuardia restaurants. Specifically, Khan was aware of six examples in the year since he has worked as regional manager. Ariel Nunez, who began working as a cashier/bartender at JFK more than a year ago, started working as a cashier at LaGuardia. Since December 1999, Nunez has continued to work shifts at both locations. Obaidul Choubhury was hired in mid-1999 to work at JFK, and since January 2000 has also worked at LaGuardia. Clayton Dixon used to work at JFK, but was later promoted to a supervisory position at LaGuardia. Shantie Keshwar worked at JFK during the summer months, but now works at LaGuardia.[14] Fayez Salloum used to work shifts at both JFK and LaGuardia during the busy summer months, although he now works only at LaGuardia. Finally, Jorge Castillo used to work shifts at both JFK and LaGuardia during the summer, and then continued to work only at LaGuardia until November 1999.[15] (Castillo no longer works for the Employer.) Khan also testified generally that when he was promoted from general manager at LaGuardia to regional manager a year ago, he transferred some of his experienced employees from LaGuardia to JFK. (No specific

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13 Khan testified that he used to be the "general manager" for the LaGuardia restaurants, before he was promoted to "regional manager" for both JFK and LaGuardia. It is not clear whether the Employer still employs any "general managers" in the hierarchy between the regional manager and the on-site supervisors.

14 It is not clear whether Keshwar works as a supervisor (Tr. 83) and/or a bartender (Tr. 146).

names were given.) For some reason that was not explained on the record, Khan stated that no employees have transferred between or among restaurants at the *same* airport, nor worked shifts at more than one restaurant *within* an airport.

The record indicates that employees at both airports earn the same starting wage, and are eligible for benefits on the same basis. Boyer testified at great length that employees at JFK and LaGuardia are governed by the same personnel handbook and policies, which include a policy on employee's appearance, uniforms, probationary period, attendance policy and others. Employees in each classification receive the same training, written training materials and job descriptions. The Employer uses the same personnel forms for employees at both locations, including the employment application form, evaluation form, disciplinary form (called "improper conduct notice"), employee "separation" form, benefit enrollment forms and others.

The Employer's payroll function is conducted at the employer's corporate headquarters in the Washington, D.C. area. Personnel records are kept there, and employees' benefits are administered from there. However, Khan testified that each restaurant has its own sets of "books," its own profitability and its own payroll expenses. He vaguely testified that paychecks for employees at the JFK restaurants have a "different designation" than those at the LaGuardia restaurants, for accounting purposes. No copies of paychecks were submitted into evidence.[16]

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15 It is not clear whether Castillo worked as a supervisor (Tr. 83) and/or a bartender (Tr. 146).

16 As stated above in footnote 1, the record leaves some doubt as to the Employer's exact corporate name or names. In its post-hearing brief, the Petitioner makes factual assertions regarding the paychecks (i.e., that employees at JFK Terminal One are paid by "AAI Terminal One, Inc.") However, the Petitioner did not choose to introduce any evidence on this point, and it is improper to consider purported facts that are not on the official record.

One of the employee recognition programs described in the personnel handbook allows the "managers at each airport" to select an "employee of the quarter" to receive a $50 bonus (Er. Ex. 2, p. 30). From those selected locally, the Employer's senior corporate management then selects a company-wide "employee of the quarter" to receive a $200 bonus.

The record also indicates that Anton Airfood has some sort of business relationship with certain "TGI Fridays" restaurants at JFK airport. When questioned on cross examination, Boyer was not sure whether to characterize the relationship as a franchise. In any event, Boyer testified that although the TGI Fridays' restaurants at JFK have a separate manager (not Khan), she is ultimately responsible for their personnel function as well. The employees at TGI Fridays receive the same Anton Airfood personnel manual.[17]

Discussion

It is well settled that a certifiable bargaining unit need only be *an* appropriate unit, not the most appropriate unit. Morand Bros. Beverage Co., 91 NLRB 409 (1950), *enf'd* 190 F.2d 576 (7th Cir. 1951), Omni-Dunfey Hotels, Inc., d/b/a Omni International Hotel of Detroit, 283 NLRB 475 (1987), P.J. Dick Contracting, 290 NLRB 150 (1988), Dezcon, Inc., 295 NLRB 109 (1989). Whenever a labor organization seeks to represent employees at a single location of a multi-location employer, the Board generally presumes the single-location unit to be appropriate, even though a broader unit might also be appropriate. A multi-location employer who asserts that the single-location unit is

[17] In its brief, the Petitioner improperly injects many additional assertions regarding Anton Airfood's operation of the TGI Friday restaurants at JFK. This Decision relies only on evidence submitted on the record.

inappropriate must rebut the presumption, for example, by showing that the single plant is so integrated with the other plants as to lose its separate identity. Kendall Co., 184 NLRB 847 (1970). The relevant factors include geographical distance between the facilities; the extent of interchange and contact among employees at the different facilities; their functional integration; the extent of centralization in management and supervision, especially with regard to labor relations (hiring, firing, affecting the terms of employment); and the history of collective bargaining.

The record indicates that the Employer's existing restaurants at JFK airport are located within the same building, Terminal 1. Regardless of whether Terminal 1 is considered a "single facility" or whether the four restaurants there are considered four "separate" facilities clustered in close proximity, the Employer's operations at JFK there clearly have a distinct geographic identity. This geographical location is separate and distinct from the LaGuardia facility, located 10 miles away. The record also indicates that, for payroll purposes, the Employer's JFK restaurants are considered as a separate entity from the LaGuardia restaurants. Furthermore, according to the handbook, "employee of the quarter" bonuses are distributed on an airport-wide basis, one for each airport.

More importantly, the record indicates that the Employer's restaurants at JFK have their own on-site supervisors, who have at least some input into employees' hiring, scheduling, discipline, evaluations/wage increases and promotions. Although regional manager Khan manages eight restaurants at two different airports, he cannot be in eight places at the same time, covering two shifts seven days per week. Thus, it is obvious that the on-site supervisors handle many of the day-to-day issues for supervision. The Board

has held that the existence of immediate or day-to-day supervision is important for determining employees' community of interest -- more important, for example, than a centralized or common procedure for hiring new employees. Omni International Hotel, supra, 283 NLRB 475 at n.1. That employees work day to day under the direction of immediate supervisors, who would likely address their immediate grievances, is considered to have "greater bearing on [their] collective-bargaining interests." Id.

In my view, the evidence presented by the Employer does not show such a strong degree of integration between the two locations as to mandate the inclusion of LaGuardia employees in the petitioned-for unit. The LaGuardia restaurants are in a different location, and have their own on-site supervisors. Admittedly, the Employer has centralized many of its human resources functions, and applies the same personnel policies to employees at both JFK and LaGuardia. However, the Employer also applies these same policies to employees in five other states, and even to employees at the TGI Friday restaurants at JFK. Yet there is no contention that *all* these employees must be included in the unit. Furthermore, I find the examples of interchange among JFK and LaGuardia employees (six over the course of a year) too infrequent to mandate a different result. Further, several , if not all, of these six transfers appear to be permanent and the Board has found such transfers are generally a less significant indication of actual interchange than temporary transfers. See General Mills Restaurant, Inc. d/b/a Red Lobster, 300 NLRB 908, 911 (1990), and Empire Health Centers Group d//b/a Deaconess Medical Center, 314 NLRB 677, fn 1.In addition, there is no evidence of functional integration between the two locations, such as food cooked by employees at one airport being served by employees at the other airport. Finally, there is no history of

collective bargaining on the multi-location basis sought by the Employer. In short, I reject the Employer's contention that the JFK restaurants have "lost their separate identity" from the LaGuardia restaurants.

Accordingly, I hereby find that the following employees constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

> All full-time and regular part-time food service employees, including servers, bartenders, cooks, cashiers and utility employees, employed by the Employer at Terminal 1, John F. Kennedy International Airport, Jamaica, New York, but excluding all other employees, office clerical employees, guards and supervisors as defined in the Act.

DIRECTION OF ELECTION

An election by secret ballot shall be conducted by the undersigned among the employees in the units found appropriate, at the time and place set forth in the notice of election to be issued subsequently subject to the Board's Rules and Regulations. Eligible to vote are employees in the units who were employed during the payroll period ending immediately preceding the date of this Decision, including employees who did not work during that period because they were ill, on vacation or temporarily laid off. Also eligible are employees engaged in an economic strike that commenced less than 12 months before the election date and who retained their status as such during the eligibility period, and their replacements. Those in the military services of the United States who are employed in the units may vote if they appear in person or at the polls. Ineligible to vote are employees who have quit or been discharged for cause since the designated payroll period, employees engaged in a strike who have been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date, and employees engaged in an economic strike which commenced more than 12 months before the election date and who have been permanently replaced. Those

eligible shall vote whether they desire to be represented for collective bargaining purposes by Hotel Employees and Restaurant Employees, Local 37, AFL-CIO.

LIST OF VOTERS

In order to assure that all eligible voters may have the opportunity to be informed of the issues in the exercise of the statutory right to vote, all parties to the election should have access to a list of voters and their addresses that may be used to communicate with them. Excelsior Underwear, Inc., 156 NLRB 1236 (1966); N.L.R.B. v. Wyman-Gordon Company, 394 U.S. 759 (1969). Accordingly, it is hereby directed that within seven (7) days of the date of this Decision, four (4) copies of an election eligibility list, one for each unit, containing the full names and addresses of all the eligible voters, shall be filed by the Employer with the undersigned who shall make the lists available to all parties to the election. North Macon Health Care Facility, 315 NLRB 359 (1994). In order to be timely filed, such lists must be received in the Regional Office, One MetroTech Center North-10th Floor (corner of Jay Street and Myrtle Avenue), Brooklyn, New York 11201, on or before March 17, 2000. No extension of time to file the lists may be granted, nor shall the filing of a request for review operate to stay the filing of such lists except in extraordinary circumstances. Failure to comply with this requirement shall be grounds for setting aside the election whenever proper objections are filed.

NOTICES OF ELECTION

Please be advised that the Board has adopted a rule requiring that election notices be posted by the Employer at least three working days prior to an election. If the Employer has not received the notice of election at least five working days prior to the election date, please contact the Board Agent assigned to the case or the election clerk.

A party shall be estopped from objecting to the non-posting of notices if it is responsible for the non-posting. An Employer shall be deemed to have received copies

of the election notices unless it notifies the Regional Office at least five working days prior to the commencement of the election that it has not received the notices. Club Demonstration Services, 317 NLRB 349 (1995). Failure of the Employer to comply with these posting rules shall be grounds for setting aside the election whenever proper objections are filed.

RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, N.W., Washington, D.C. 20570. This request must be received by March 24, 2000.

Dated at Brooklyn, New York, March 10, 2000.

/S/ ALVIN BLYER

Alvin Blyer
Regional Director, Region 29
National Labor Relations Board
One MetroTech Center North, 10th Floor
Brooklyn, New York 11201

370-0750-4900

347-8020-2000

420-0100, 420-1218, 420-2936,
420-4000 et seq., 420-4633,
420-5000 et seq., 420-6200

APPENDIX

The transcript is hereby amended as follows:

The transcript cover page and exhibit cover pages incorrectly identify the Petitioner. The Petitioner's correct name is Hotel Employees and Restaurant Employees Union, Local 37, AFL-CIO.

Page 8, line 20: "Eastern Terminal" rather than "East Internal".

Page 20, line 3: "on-site" supervisors, rather than "outside".

Page 33, line 22: "Lufthansa" Airline, rather than "LaFonza".

Page 90, line 12 et seq.: All references to regional manager Ashfaque "Kahn" should be spelled "Khan".

Page 107, line 24: "meal" rather than "mail".

Page 108, line 4: "meal" rather than "mail".